

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DORIC FOODS CORPORATION ) No. **84R-1165-PS**

Appearances:

For Appellant: Robert J. Wynne  
Attorney at Law

For Respondent: Anna Jovanovich  
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a)<sup>1/</sup>, of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Doric Foods Corporation for refund of franchise tax in the amounts of \$13,131, \$1,793, \$58,534, \$77,998, and \$90,211, for the income years 1976, 1977, 1978, 1979, and 1980, respectively.

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<sup>1/</sup> Unless otherwise specified, all section reference<sup>5</sup> are to sections of the Revenue and Taxation Code as in effect for the income years in issue.

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The issue presented is whether Doric Foods Corporation was engaged in a single unitary business with its parent corporation and four affiliated corporations.

Appellant Doric Foods Corporation, a Florida corporation, was a wholly owned subsidiary of Associated Coca-Cola Bottling Co. (Associated), a Delaware corporation. Associated also owned all of the stock of Clint Davis Company (Clint Davis) (now **Associated** Packaging Products, Inc.), a Florida corporation;<sup>2/</sup> Florida Coca-Cola Bottling Company (Florida Coca-Cola), also a Florida corporation; the Philadelphia Coca-Cola Bottling Company (Philadelphia Coca-Cola), a Delaware corporation; and Terre Haute Coca-Cola Bottling Co., Inc. (Terre Haute Coca-Cola), an Indiana corporation.

Appellant was engaged in the processing and marketing of noncarbonated citrus-based beverages and similar beverages in California and other states under the brand names of "**Sunny Delight**," "**Tip Top**," and "**Florida Citrus Punch**." Clint Davis was engaged in the manufacturing of polyethylene film and related flexible packaging materials in states other than California. Associated and its subsidiaries, other than appellant and Clint Davis (hereinafter "**Coca-Cola subsidiaries**"), were engaged in the production, packaging, and distribution of Coca-Cola and other carbonated beverages in their respective states and in the Caribbean markets under franchises from the Coca-Cola Company of Atlanta, Georgia (Coca-Cola Company), a nonaffiliated corporation. The sale of Coca-Cola in bottles and cans was conducted through a franchise system that consisted of the manufacture of the syrup by the Coca-Cola Company; bottling and sales in specified areas by first-line bottlers; and occasionally bottling and sales by subbottlers in portions of a first-line territory. Associated operated primarily as a first-line bottler engaged directly in bottling and selling. Associated and the Coca-Cola subsidiaries also marketed, under an exclusive franchise from the Coca-Cola Company, "**Tab**," "**Sprite**," "**Fresca**," "**Mr. Pibb**," "**Mello Yello**," and "**Fanta Beverages**"; "**Dr. Pepper**" and "**Lipton Tea**" under

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<sup>2/</sup> From the record it appears that both parties agree that Clint Davis was not a part of appellant's unitary business. Therefore, we will limit our discussion to whether appellant conducted a unitary business with Associated and its Coca-Cola subsidiaries.

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franchises in some of its markets; and several carbonated soft drinks under the trade names of **"Royal Palm"** and **"Holiday."** All of these products were sold to retail stores and other outlets, including food markets, drug stores, etc.

Coca-Cola, as a completed beverage, was produced through a manufacturing process which included mixing Coca-Cola bottler's syrup with carbonated water, or by a similar procedure using Coca-Cola concentrate and sweeteners. All Coca-Cola bottler's syrup and concentrate were manufactured through a secret process by the Coca-Cola Company. Associated purchased all of its basic raw material, Coca-Cola bottler's syrup and concentrate, from the Coca-Cola Company.

Appellant contends that Associated provided all of the insurance, advertising, accounting, taxation and data processing services required by its subsidiaries, and that the management of the subsidiary companies did not have authority to sign checks, except for petty cash items, or authority to adjust selling prices. Associated also contends that it administered the cash management program, established and administered the capital budgets, set salary adjustment guidelines, and established and maintained appropriate liability and casualty insurance through group policies and self-insurance, on behalf of its subsidiaries. Associated further contends that it was responsible for the maintenance of corporate minutes and similar corporate legal matters, and its management set inventory level guidelines for major raw materials and administered the purchase of sugar, the major raw material common to all subsidiaries.

The officers of each subsidiary were also officers of Associated, and during the entire period either Chapman S. Root or Berrien D. Sutton was chairman of the board and president of each corporation, and with few exceptions the directors of each subsidiary were also directors of Associated.

For the years in issue appellant filed its California franchise tax returns on a separate company basis excluding the income and apportionment factors of Associated and its Coca-Cola subsidiaries. After an audit of income years 1976-1978, appellant filed amended returns on a combined basis for all of the years in issue that included the income and apportionment factors of Associated and its Coca-Cola subsidiaries. The amended returns resulted in refund claims for these years totaling \$241,667. Respondent Franchise Tax Board denied each of the claims on the ground that appellant and Associated and its Coca-Cola subsidiaries were engaged in separate lines of business, and consequently did not engage in a single unitary

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business during the years in issue. Respondent concluded that appellant's line of business was the manufacturing and packaging of fruit drink beverages, and Associated and its Coca-Cola subsidiaries manufactured and bottled carbonated soft drinks (principally Coca-Cola). Respondent also concluded that the difference in operations was manifested by: (1) the absence of any exchange of marketing knowledge, product research and development, or production engineering between the corporations; (2) the absence of any research and development between appellant and Associated (appellant maintained its own independent research and development staff at its Florida headquarters); and (3) the difference in marketing programs (Associated and its Coca-Cola subsidiaries utilized a store-door delivery system and coordinated their marketing programs through the Coca-Cola Company, whereas appellant marketed its citrus drinks through food brokers and operated through a separate specialized sales department). Respondent's determination was further influenced by its finding that there was no flow of goods between the soft drink corporations and appellant, and that all of appellant's operational decisions were made at the local level. Subsequent to respondent's denial of the refund claims, appellant made this timely appeal.

If a taxpayer derives income from sources both within and without California, its franchise tax liability is required to be measured by its net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If the taxpayer is engaged in a single unitary business with affiliated corporations, the income attributable to California sources must be determined by applying an apportionment formula to the total income derived from the combined unitary operations of the affiliated companies. (Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947).)

The California Supreme Court has held that the existence of a unitary business may be established by the presence of unity of ownership; unity of operation as evidenced by central accounting, purchasing, advertising, and management divisions; and unity of use in a centralized executive force and general system of operation. (Butler Bros. v. McColgan, 17 Cal.2d 664 [111 P.2d 334] (1941), affd., 315 U.S. 501 [86 L.Ed. 991] (1942).) The court has also stated that a business is unitary if the operation of the business done within California is dependent upon or contributes to the operation of the business outside California. (Edison California Stores, Inc. v. McColgan, supra, 30 Cal.2d at 481.) More recently, the United States Supreme Court has emphasized that a unitary business is a functionally integrated enterprise whose parts are characterized

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by substantial mutual interdependence and a flow of value.  
(Container Corp. v. Franchise Tax Board, 463 U.S. 159, 178-179  
[77 L.Ed.2d 545], reh'g. den., 464 U.S. 909 [78 L.Ed.2d 248]  
(1983).)

It is axiomatic that business activities conducted in multiple taxing jurisdictions are not automatically unitary merely because they are commonly owned or controlled. Because of constitutional limitations, it is necessary to differentiate between a truly integrated, unitary business, whose income is appropriately apportioned among the jurisdictions in which it is conducted, and a group of commonly owned businesses or activities, the operations of which really have no effect upon one another and the income from which is, therefore, not properly subject to apportionment. (Anneal of Sierra Production Service, Inc., et al., 90-SBE-010, Sept. 12, 1990, and the cases cited therein.)

We first discuss appellant's argument regarding centralized management services provided to appellant by Associated. Appellant's evidence demonstrates that throughout the years **in issue many** of the officers and directors of Associated were also officers and/or directors of its subsidiaries. The evidence also demonstrates that major policy decisions made by the common directors were the setting of inventory level guidelines for major raw materials and the determination of broad salary adjustment guidelines. (Resp. Br., Ex. B.) The centralized management activities were (1) capital budgeting and financing, (2) accounting, (3) data processing, (4) insurance coverage, (5) employee benefits administration (**excluding union-sponsored** plans), and (6) corporate legal services. All operational decisions, however, except capital budgeting, were made at the subsidiary level. (Resp. Br., Ex. A.)

The mere fact that some functions were performed by central managers does not compel the conclusion that a unitary business existed among appellant, Associated, and its Coca-Cola subsidiaries. As we stated in Anneal of Sierra Production Service, Inc., et al., supra, the mere existence of "common officers or **directors**" or an allegation that the various business segments were under the ultimate control of the same person or group of people will not by itself result in the finding of **strong** centralized management; there should be a showing that the central managers, among other things, played a regular operational role in the business activities of the various divisions or affiliates. From the record it does not appear that the oversight provided by the integrated executive

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force constituted strong centralized management, or that appellant and Associated were managed in such a way that they benefited each other's operations. (Cf. Appeal of Sierra Production Service, Inc., et al., supra.) Appellant's listing of the centralized management services provided by Associated, without a demonstration of how such services resulted in some significant flow of value between the corporations, leaves us with the belief that such services were what any parent company would provide to its subsidiaries. (See Container Corp. v. Franchise Tax Board, supra, 463 U.S. at 180, fn. 19.)

Appellant also argues that it was engaged in the same line of business as Associated and its Coca-Cola subsidiaries, excluding Clint Davis. While it is true that appellant, Associated, and its Coca-Cola subsidiaries all engaged in the processing and marketing of beverages, we believe the similarity ended there. We are not aware of any case law, nor has appellant directed us to any, which defines the term "**same line of business**" in a unitary context. If there were such a definition, we believe the term would be narrowly defined. This conclusion is drawn from the United States Supreme Court's statement in Container that:

When a corporation invests in a subsidiary that engages in the same line of work as itself, it becomes much more likely that one function of the investment is to make better use - either through economies of scale or through operational integration or sharing of expertise - of the parent's existing business-related resources.

(Container Corp. v. Franchise Tax Board, supra, 463 U.S. at 178.)

A broad definition of the term "**same line of business**" would render this statement meaningless, whereas a narrow definition would provide a distinction between those transactions and circumstances which have no real unitary substance, and those in which the factors show a significant interrelationship among the affiliated entities such that one is persuaded to find the existence of a single, integrated economic enterprise (see Appeal of Sasa Corporation, Cal. St. Bd. of Equal., June 29, 1982; see also Appeal of Capitol Industries-EMI, Inc., 89-SBE-029, Oct. 31, 1989).

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In Appeal of Mohasco Corporation, decided by this board on October 14, 1982, we rejected respondent's argument that, because the taxpayer and its Mexican subsidiaries were engaged in the manufacture of carpets, they were in the same line of business for purposes of determining the existence of unity. We rejected the argument principally because there were numerous differences with regard to the style, design, and content of the carpets produced by each corporation, and the production equipment used by each corporation differed substantially.

In the instant matter, the differences in marketing knowledge, product research and development, and production engineering, among appellant, Associated, and the Coca-Cola subsidiaries appear to be so substantial that no meaningful exchange of **information** likely occurred. Thus, appellant did not use the business-related resources of Associated or its Coca-Cola subsidiaries. We believe that the only discernible similarity between the products of appellant and Associated and the Coca-Cola subsidiaries was that they all produced a beverage, and such a similarity is much too broad to conclude that they engaged in the same line of business as that term would be defined in a unitary context. (See Appeal of Quaker State Oil Refineries Corporation, 87-SBE-070, Oct. 6, 1987.)

Because we believe there was a substantial difference between the operations of appellant and Associated and its Coca-Cola subsidiaries, we fail to see how the setting of inventory guidelines for dissimilar types of raw materials resulted in integration of the corporations. A unitary business is found where the management role of the parent "is grounded in its own operational expertise and its overall operational strategy." (Container Corp. v. Franchise Tax Board, supra, 463 U.S. at 180, fn. 19.)

Appellant also argues that Associated's negotiation of contracts for the purchase of sugar on behalf of appellant and the Coca-Cola subsidiaries has unitary significance. Respondent and appellant appear to agree that sugar purchased by Associated was resold to appellant and the Coca-Cola subsidiaries; however, there is no concrete evidence in the record of the quantity or dollar amount of such intercompany sales nor is there evidence which indicates whether or not the subsidiaries could have purchased the sugar on their own, or whether the purchases benefited the group, e.g., through volume discounts.

At the oral hearing on this matter, appellant presented the testimony of the Director of Tax Administration and

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Assistant Vice President of the Coca-Cola **Company**<sup>3/</sup> as evidence that appellant was unitary with Associated and its Coca-Cola subsidiaries during the years in issue. Appellant's witness testified that, as part of a due-diligence team involved in the acquisition of Associated by the Coca-Cola Company, he had an opportunity to meet and discuss the nature and extent of the operations of appellant with appellant's principal executive officers. (Tran., pp. 8-9.) Appellant's witness also testified that during the years in issue he was not an employee, a director, or an officer of appellant or Associated. (Tran., pp. 27-28.) Thus, the witness' testimony regarding the unitary operations of appellant was not from his own personal knowledge, but was hearsay evidence purportedly conveying statements made by unknown third parties. Had the testimony of someone with direct personal knowledge of the nature and extent of appellant's operations been offered, this board and respondent would have had an opportunity to examine the depth of such individual's knowledge of appellant's operations. All relevant evidence, including affidavits and other forms of hearsay evidence, is admissible in proceedings before this board, but only if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. (Cal. Code Regs., tit. 18, reg. 5035, subd. (c).) Under this standard, we cannot give significant weight to the testimony of a witness who was not testifying from his own personal knowledge and was not even associated with appellant or its affiliates during the years in issue.

Because appellant has failed to establish the unitary connections between itself, Associated, and the Coca-Cola **subsidiaries**, we must sustain respondent's action in this matter."

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<sup>3/</sup> The Coca-Cola Company was permitted to represent appellant because it acquired Associated and its subsidiaries (including appellant) in June 1982, and although the Coca-Cola Company sold the operations of appellant in July 1983, it appears the acquisition and disposition agreement made the Coca-Cola Company liable for appellant's taxes and the recipient of any refunds for years prior to the date appellant was sold.

<sup>4/</sup> While appellant has alleged there was centralized management and it was engaged in the same line of business as Associated, appellant made no claim that it is entitled to the presumptions of unity contained in respondent's regulation 25120. Accordingly, we do not rely on the provisions of the regulation to decide this matter. Assuming, arguendo, that the issue of  
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4/ (continued)  
whether appellant **was** entitled to the presumptions contained in the regulation were before us, we do not believe appellant would have been entitled to the presumption of strong centralized management contained in subdivision (b)(3) of the regulation because the central managers here did not engage in a regular operational role in appellant's business activities. Similarly, since we concluded that appellant and Associated were not engaged in the same line of business, appellant also would not be entitled to the presumption contained in subdivision (b)(1).

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Doric Foods Corporation for refund of franchise tax in the amounts of \$13,131, \$1,793, \$58,534, \$77,998, and \$90,211 for the income years 1976, 1977, 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December, 1990, by the State Board of Equalization, with Board Members Mr. Collis, Mr. Dronenburg, Mr. Bennett, and Mr. Davies present.

Conway H. Collis, Chairman  
Ernest J. Dronenburg, Jr., Member  
William M. Bennett, Member  
John Davies\*, Member  
\_\_\_\_\_, Member

\*For Gray Davis, per Government Code section 7.9